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SC

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/248,057 02/10/99 BUI

T 62492

022242 QM32/0425  
FITCH EVEN TABIN AND FLANNERY  
120 SOUTH LA SALLE STREET  
SUITE 1600  
CHICAGO IL 60603-3406

EXAMINER

THISSELL, J

ART UNIT

PAPER NUMBER

3762

DATE MAILED:

7  
04/25/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.  
**09/248,057**

Applicant(s)  
**Bui et al.**

Examiner  
**Jeremy Thissell**

Group Art Unit  
**3762**



☒ Responsive to communication(s) filed on Jan 7, 2000

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1035 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claim

☒ Claim(s) 1-36 is/are pending in the applicat

Of the above, claim(s) 2, 4-7, 14-17, 22, 23, and 25 is/are withdrawn from consideration

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1, 3, 8-13, 18-21, 24, and 26-36 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☒ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 4

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

*[Signature]*  
JEREMY THISSELL  
Examiner

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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### **DETAILED ACTION**

1. With regard to applicants argument that Each of species A-E could have been examined without a serious burden on the examiner, the examiner disagrees. In order to examiner the application as filed, he would have to not only write 5 different rejections (one for each species) but search in AT LEAST 5 different places for just the programmable medical device. The examiner hereby makes the election of species requirement final. Applicant will be entitled to the non-elected species if a claim is determined to be allowable AND generic.

2. With regard to applicant's argument that the remote control unit and touch screen are not subgroups of the "controller", the examiner agrees. After further review of the specification and claims, the examiner has determined that nowhere do the claims specify that the remote control unit and touchscreen are alternatives to one another. Some claims do recite a remote control unit and infact include a touchscreen on the remote itself. In addition, the claims that do not recite a remote control unit, are merely broad and do not specify that the unit is not or does not contain a remote control unit.

Therefore, the examiner withdraws the election of species requirement for the "controller".

3. With regard to the election of species requirement between a mouse, a lightpen, and a keypad, the examiner hereby makes this requirement final for the same reasons set forth above for the programmable medical device.

4. All that being said, the examiner has determined that the claims that Applicant has elected (1, 3, 8-11, 18-21, 24, and 26-36) drawn to Species A for an infusion pump and Species Ic for a keypad,

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are all appropriate. In addition, the examiner has determined that claim 12 is also broad enough to include an infusion pump and has been considered on the merits for this office action.

5. Claims 2, 4-7, 14-17, 22, 23, and 25 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 6.

### ***Claim Objections***

6. Claim 8 objected to because of the following informalities:

In claim 8, line 3, it appears as though the word “or” should be “on”. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

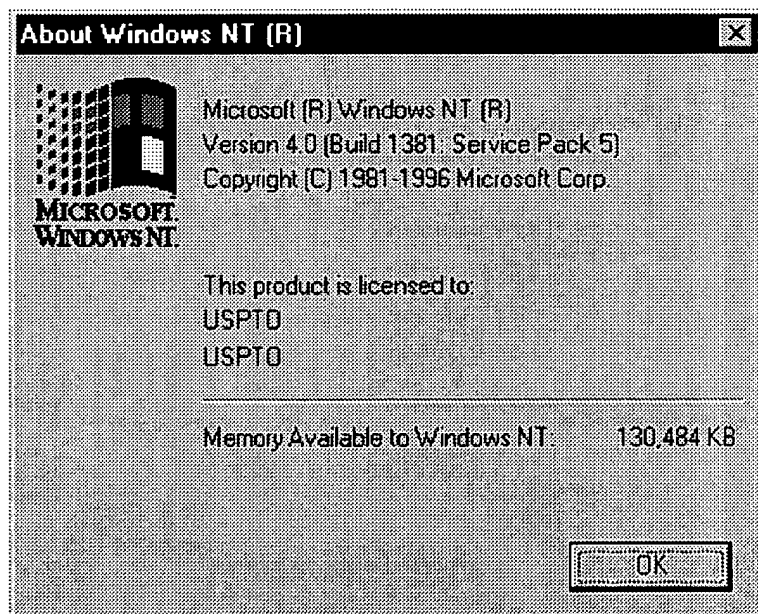
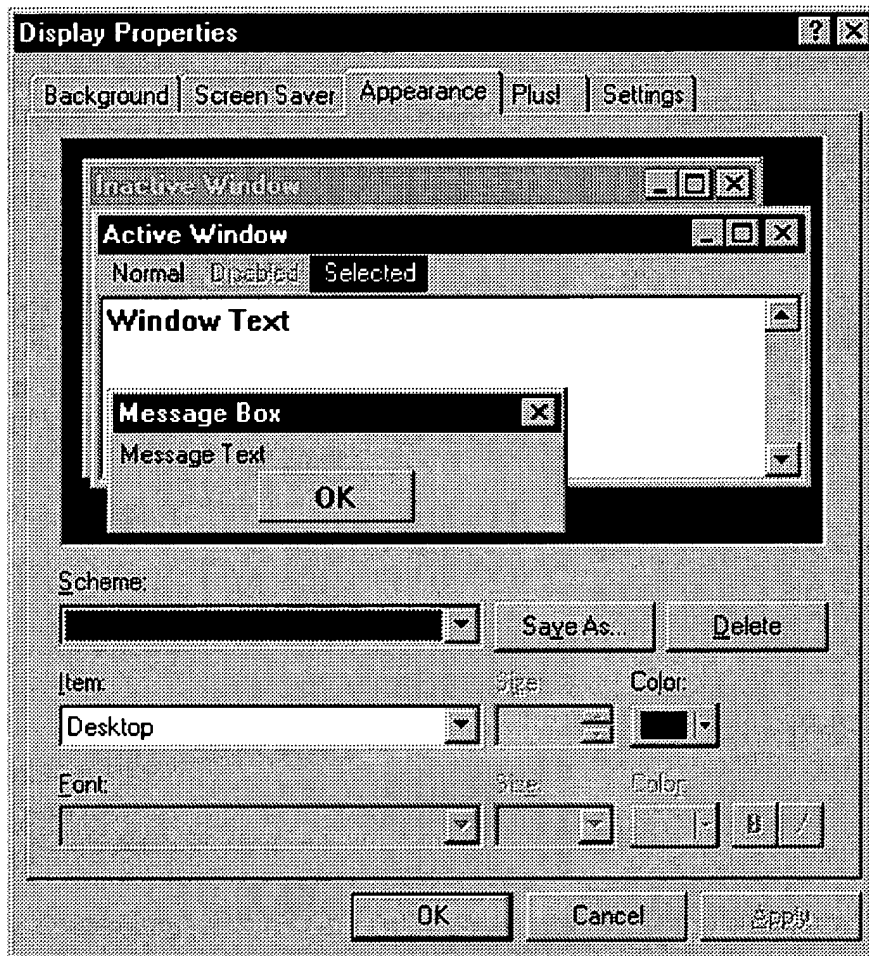
8. Claims 1, 3, 8-13, 18-21, 24, and 26-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lynch et al. (US Pat No. 5,885,245).

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Lynch teaches the device substantially as claimed except for selectively displaying the keys according to the status of the device.

The examiner takes the position that since the device of Lynch is a computerized processing and display unit, possibly having a touch screen display, that it would have been obvious to use a well-known system of inactive keys shown in "shadow". The examiner takes the position that this system is (and has been) universally known in computer systems, and has included captured windows from his own computer showing the "Disabled" selection in "shadow", and the "About Windows NT 4.0" window that indicates that it was published in 1996.

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*Contacts*

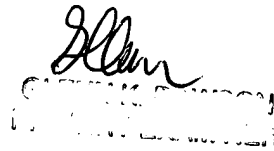
Any inquiry concerning this communication should be directed to Jeremy Thissell at (703) 305-5261, or to Primary Patent Examiner Glenn Dawson (703) 308-4304.

Jeremy Thissell

Patent Examiner

JT

April 24, 2000

  
Glenn Dawson  
Primary Patent Examiner